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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

Dated the 12th day of October, 1988.

Present

THE HON'BLE MR. JUSTICE K.S.PUTTASWAMY VICE CHAIRMAN.
THE HON'BLE MR. AJAY JOHRI .. MEMBER(A).

Original Application No.1767 of 1988

Dr.Pradeep Kumar .. Applicant

-vs.-

Employee State Insurance
Corporation. .. Respondent.

Sri R.K.Namal, Counsel for the applicant.
Sri D.P.Malhotra, Counsel for the respondent.

This application coming on for hearing
this day, Hon'ble Vice Chairman made the following:

ORDER

This is an application made by the applicant
under Section 19 of the Administrative Tribunals Act,
1985(Act).

2. Dr.Pradeep Kumar, applicant before us, with
the educational qualification of M.B.B.S., applied
for the post of Insurance Medical Officer Gr.II(IAM Gr.II)

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in the Employees' State Insurance Corporation, Delhi (ESI). On an evaluation of his merit and the merit of others, he was selected for one of the advertised posts, on which basis he was offered an appointment order on 17th March 1988 (Annexure A4) subject to the terms and conditions stipulated therein. On receipt of the same, the applicant expressed his willingness for appointment to the said post. On that, the ESI subjected the applicant to medical examination by a special Medical Examination Board (Board), which in August 1988 examined the applicant and reported that he was medically unfit for the post. On an examination of the report of the Board, the ESI, in its letter No.A-19(11)-74/88-DM(HQ) dated 5-9-1988 (Annexure-A1) had cancelled its earlier offer of appointment issued to the applicant. In this application made on 16-9-1988, the applicant has challenged the said order of ESI.

3. This case came up for admission on 20-9-1988, on which day, a Division Bench of this Tribunal ordered notice to the respondent before admission and in pursuance of the same, the respondent had entered appearance and had produced records.

4. Shri R.K.Kamal, learned Counsel for the applicant contends that the post to which the applicant had been appointed was a "non-technical post" and the ESI in its order made on 5-9-1988 (Annexure-A1) had illegally barred the applicant from challenging

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the report of the Board in an appeal available to him under the orders made by Government from time to time and that even otherwise, that order was illegal.

5. Shri D.P.Malhotra, learned Counsel for the respondent refuting the contention of Shri Kamal, sought to support the decision of the Board.

6. In the impugned letter dated 5-9-1988 (Annexure-A1), the ESI had stated that no further correspondence will be entertained from the applicant on the subject. But, that statement should only be read, as the ESI not entertaining any further correspondence and not as prohibiting the applicant from filing an appeal against its decision, if such an appeal was available to the applicant. We read the order of the ESI in that manner only, and not in any other way. On this view, we must now examine whether the decision of the Board which is based on the report of the Board, is appealable or not.

7. Shri Malhotra very fairly and rightly pointed out the instructions issued by Government printed at page 332 of Swami's Compilation of F.R.S.R. Part-I, General Rules 9th Edition, which provides for an appeal and the manner of its disposal. Under these instructions, an appeal against the decision of the ESI is clearly available to the applicant.

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On this view, the applicant can undoubtedly challenge the decision of the ESI in an appeal before an appellate authority/Board (AB). When such an appeal is filed, the AB has jurisdiction and power to examine the same as an appellate Board and decide the same in accordance with law, which must necessarily be different from those that were the Members of the Board. On that view, we consider it proper to permit the applicant to file such an appeal and if so filed, we must direct the AB to dispose of the same on merits in accordance with law. In deciding that appeal, it is appropriate for the AB to examine whether the applicant can be appointed to any other post where the impairment found by the Board, if found correct, was not an impediment in the discharge of his duties. We do hope and trust that they will do so.

8. On the question whether the post is a technical post or not, we consider it unnecessary to examine and decide the same at this stage. We leave open the same.

9. Shri Kamal prays for 15 days time for filing the appeal before the appellate Board. We grant the same.

10. In the light of our above discussion, we make the following orders and directions:

We declare that the order made by the ESI on 5-3-1988 (Annexure A-1) is an appealable order and it is open to the applicant to file an appeal before the appellate

appellate Board in accordance with the rules and orders regularising the same within 15 days from to-day and that when such an appeal is filed by the applicant within the time permitted by us, we direct the appellate Board of the ESI to dispose of the same in accordance with law on merits only and not on any technical ground.

11. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.

12. Let this order be communicated to the parties immediately.


(AJAY JUHRI)
MEMBER (A)


(K.S. PUTTASWAMY)
VICE CHAIRMAN

12/12/88

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